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Paper No. 10

In re Application of
Nikrooz Niknamad
Application No. 10/053,979
Filed: January 19, 2002
Attorney Docket No. RSNN

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: DECISION ON PETITION
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This is a decision on the petition filed by on December 22, 2003 by which petitioner requests withdrawal of the examiner's final rejection, entry of a replacement drawing requested by the examiner, and examination of claims 3 and 4 in light of the replacement drawing. The petition is considered pursuant to 37 CFR 1.181, and no fee is required. A refund of the \$130.00 petition fee will be schedule in due course.

The petition is denied.

Petitioner has set forth no basis for holding that making the action dated November 18, 2003 final was improper. Accordingly, there is no basis for withdrawal of the finality of that action.

As to the issue of entry of the replacement drawings, the mere fact that the examiner required replacement drawings does not mean that the examiner must enter replacement drawings that appear to contain new matter. Petitioner's attention is directed to the fact that the shape of the cap in proposed Figures 2A and 2B differs from the shape of any originally disclosed cap. In proposed Figure 2A, the cap is shown with a vertical lowermost portion, an enlarged inwardly tapering frustoconical portion, a second distinct frustoconical portion joined to the upper edge of the first tapering frustoconical portion, and a circular top surface. In proposed Figure 2B, the cap is shown with a single large inwardly tapering frustoconical portion joined at its lower edge to a cylindrical lower cap portion and to a smaller cylindrical portion at its upper edge, with a circular top surface joined to the smaller cylindrical portion. No original disclosure supports either shape for the cap. In addition, while the showing in Figures 2A and 2B with respect to element 32 appears to address the examiner's original criticism vis- a-vis original Figure 2, the proposed Figures 2A and 2B do not show the tapered edges 34 to best advantage.

In summary, the examiner has not been shown to have acted in an arbitrary or capricious manner with respect to refusing to enter Figures 2A and 2B, each of which appear to contain prohibited new matter. Neither has the examiner's action in making the Office letter dated November 18, 2003 final been shown to have been arbitrary or capricious. There is no basis for granting any of the relief requested.

The application is being forwarded to the Head Supervisory Applications Examiner in Technology Center 3700 for scheduling the refund as discussed above. Thereafter, the application will be retained in the Technology Center 3700 Central Files pending the filing of a proper reply to the final rejection. See 37 CFR 1.113 and 1.116. Petitioner is reminded that the period for filing such reply remains as set in the final rejection notwithstanding the filing of the instant petition. See 37 CFR 1.181(f).

PETITION DENIED.

E. Rollins-Cross, Director
Technology Center 3700

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Adjustment date: 02/20/2004 SZIRMEK
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